33334

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA

IN RE: VISITATION AND CUSTODY OF SENTURI N. S. V.

MISTY C. V.,

APPELLANT,
RESPONDENT BELOW

v. **No. 063450**

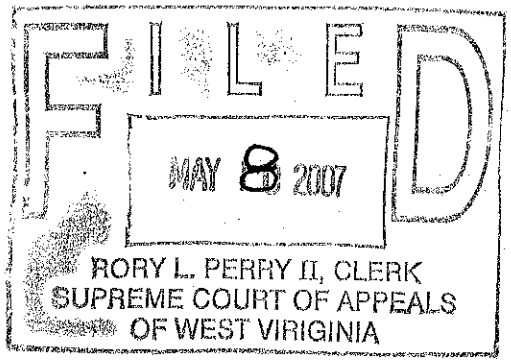
JOSHUA L. S.,

APPELLEE, PETITIONER BELOW

and

CHRISTOPHER AND TANYA F.

APPELLEES, INTERVENORS BELOW.



BRIEF ON BEHALF OF APPELLEES, CHRISTOPHER and TANYA F.

Submitted by:

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This is a custody matter, wherein the Appellees, Christopher and Tanya F., were allowed by the Family Law Judge's June 28, 2006 Order to intervene and participate in the custody proceedings below and through the proceedings below were found to have developed, with the consent of the Appellant, a relationship with the minor child sufficient to result in the Appellees becoming the psychological parents of the child.

Cabell County Circuit Court Judge Alfred Ferguson's October 30, 2006 order affirmed the Family Law Judge's order. Appellant filed an Application For Stay of October 30, 2006 Order Affirming Family Law Judge's Order, entered January 22, 2007. By Order entered March 27, 2007, Cabell County Circuit Court Judge denied Application For Stay of October 30, 2006 Order. Appellant now seeks an order from this Honorable Court reversing the Cabell County Circuit Court's October 30, 2006 order.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

On February 27, 2006, Misty V. filed a "Notice of Relocation" and advised of her plan to relocate to 314 Belmont Drive, Corpus Christi, Texas, on or after March 17, 2006. Misty V. properly noticed Joshua S., the father of Senturi.

On March 7, 2006, Joshua S., joined by Intervenors Christopher and Tanya F., filed a "Motion For Ex Parte Order For Emergency Temporary Custody and a Verified Petition For Custody and Response To Notice of Relocation." Joshua S.'s and Christopher and Tanya F.'s motion alleged, in part, that Senturi had been living with Christopher and Tanya F. "for the past fourteen months, from Christmas 2004 to the present date, with only limited visitation with the Petitioner." (Resp't/Pet'r's and Intervening Pet'rs' Mot. For Ex Parte Order, Para. 4.) Misty V.'s response denied the allegations contained in the Ex Parte Motion and moved to dismiss the Intervenors from the case based on their lack of standing.

On March 7, 2006, Family Court Judge Keller entered an Order Granting Ex Parte Relief to Joshua S. and Christopher and Tanya F. Misty V. was not granted any parenting time and she filed a "Motion For Ex Parte Order To Set Aside the March 7, 2006 Order." Misty V. alleged that Tanya F. was the infant child's babysitter and received payments from LINK.

On March 14, 2006, the Family Court heard Misty V.'s motion to vacate challenging Christopher and Tanya F.'s standing to maintain their action for custody. The Family Court allowed the Intervenors to maintain custody of Senturi with Misty V. having two hours of supervised visitation on Monday, Wednesday, Friday and Saturday

at a local McDonalds. At this hearing, though denying illegal drug use, Misty V. voluntarily submitted to a drug test, for which she tested positive for illegal drugs.

At the March 29, 2006 hearing Judge Keller heard evidence from Christopher and Tanya F., as well as Misty V. However, given the court's schedule Misty V. was unable to present all of her witnesses. Judge Keller asked counsel to submit briefs addressing the standing as it pertained to Christopher and Tanya F.

At the May 4, 2006 hearing before Judge Keller, Misty V. alleged that Christopher and Tanya F. were merely babysitters and that there were no written documents transferring custody of Senturi to the Intervenors. Christopher and Tanya F. admitted they were not involved in the planning of Senturi's birth, and, admitted they did not exercise time with Senturi for the first nine months after her birth. Christopher and Tanya F. continued to maintain that they were the primary caregivers of Senturi for the fourteen months preceding the filing of their Motion to Intervene.

By Order entered June 23, 2006, the Family Court designated Misty V. the primary residential parent and the Court ordered that Christopher and Tanya F. should have significant parenting time with the child, reflective of their relationship with the infant child. Additionally, the Family Court made several findings of fact and conclusions of law, including but not limited to, that for more that a year, Christopher and Tanya F. have been actively involved in the caretaking of the child and Misty V., during this time, has allowed Christopher and Tanya F. to keep the child in their home on a regular basis (Findings of Fact 13 and 14); that Misty V. contends this was a babysitting arrangement and that she did not relinquish the child to Christopher and Tanya F. (Findings of Fact 15); that the arrangement appears to be more than regular babysitting;

that Christopher and Tanya F. kept the child consistently, several days a week, including overnight; that Christopher and Tanya F. were not paid to babysit the child; that they provided the child with food and shelter when she was with them (Findings of Fact 16 and 17); that for all intents and purposes, Misty V. and Christopher and Tanya F. had a shared parenting arrangement and with the consent of Misty V., that Christopher and Tanya F. have formed an attachment to the child and it would appear the child is similarly bonded to Christopher and Tanya F. (Findings of Fact 18 and 20); that though she denied using drugs in court, Misty V. did voluntarily take a drug test, for which she tested positive (Finding of Fact 23); that Christopher and Tanya F. have become "psychological co-parents" of Senturi (Finding of Fact 25) and that it is not in the best interest of the child to deprive her of the love and stability provided by Christopher and Tanya F. (Finding of Fact 26).

Misty V. appealed the Family Court's order to the Circuit Court of Cabell County. On August 30, 3006, Misty V. sought writs of prohibition and mandamus from this Honorable Court, and by Order entered August 31, 2006, this Court denied the requested writs without prejudice to re-file in the Circuit Court.

Judge Alfred Ferguson of the Circuit Court of Cabell County, on October 30, 2006, entered the "Order Affirming Family Law Judge's Order." The order finds:

1. That the family law judge's decision is supported by the testimony and other evidence offered to the court;
2. That said decision is warranted by the facts;
3. That said decision is not arbitrary nor capricious;

4. That the family law judge's decision is based on a correct application of the law.

Your Appellees contend that the Circuit Court Judge did not err as matter of fact and of law in affirming the Family Law Court's order. On March 14, 2007, this Honorable Court heard oral presentation of Misty V.'s petition for appeal. On March 27, 2007, Misty V. received this Court's Order granting her petition and setting the briefing schedule. On March 27, 2007, Circuit Court Judge Ferguson entered the "Order Denying Application for Stay of the October 30, 2006 Order Affirming Family Law Judge's Order." Misty V. filed a separate motion with her appeal seeking a stay from this Court. Likewise, Christopher and Tanya F. filed a response to said motion, and in addition to the arguments contained in that response, now present this reply brief seeking affirmation of the October 30, 2006 Order.

DISCUSSION OF LAW

A. Standard of Review

In reviewing a final order entered by a circuit judge upon review of, or upon refusal to review, a final order of a family court judge, this Court reviews findings of fact made by the family court judge under the clearly erroneous standard, and the application of the law to the facts under an abuse of discretion standard. This Court reviews questions of law *de novo*. Syllabus, *Carr v. Hancock*, 216 W.Va. 474, 607 S.E.2d 803 (2004). Syllabus point 1, *Staton v. Staton*, 218 W.Va. 201, 624 S.E.2d 548 (2005). A finding is clearly erroneous when, although there is evidence supporting the finding, the reviewing court on the entire evidence is left with the definite and firm conviction that a

mistake has been committed. *In Re: Janice G.*, 566 S.E.2d 226, 230 (W.Va. 2002). However, a reviewing court may not overturn a finding simply because it would have decided the case differently, and it must affirm a finding if the circuit court's account of the evidence is plausible in light of the record viewed in its entirety. *Id.* Even greater deference must be accorded to trial court's findings of fact, where findings are based on determinations regarding credibility of witnesses. *In Re: Jonathan Michael D.*, 459 S.E.2d 131, 136 (W.Va. 1995).

B. DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE FAMILY LAW COURT'S DETERMINATION THAT APPELLANT AND INTERVENORS HAD A SHARED PARENTING ARRANGEMENT.

Beginning on Christmas 2004, a relationship consented to and encouraged by Misty V. began between Christopher and Tanya F. and the infant child Senturi. In her first assignment of error Misty V. focuses on the technical definition of a "parenting plan." While it is a fact that a written parenting plan was never formalized, it is entirely inaccurate to claim that a parenting arrangement did not exist between Misty V. and Christopher and Tanya F.

The evidence in this case is overwhelming that beginning on Christmas 2004, with the consent and encouragement of Misty V., she and Christopher and Tanya F. entered into a relationship where for the next fourteen (14) months of Senturi's life, Christopher and Tanya F. were to become the primary caregivers of this child. Simply because Misty V. and Christopher and Tanya F. did not memorialize a written parenting plan in no way lessens the facts of this case, namely that Misty V., beginning on Christmas 2004, handed Senturi over to Christopher and Tanya F., and for the next

fourteen (14) months Christopher and Tanya F. were Senturi's primary caregivers. In fact, Christmas 2004, was the first time Christopher and Tanya F. had the opportunity to spend time with Senturi. What was supposed to be an overnight stay with Christopher and Tanya F. turned into a seven (7) day stay for Senturi. This would be the pattern for the next fourteen (14) months.

The Appellant asserts that, "[i]f anyone could claim that his or her exercise of time with a child has developed into a shared parenting "arrangement" with a parent who, like Misty V. was actively parenting her child, then any non-parents like the Appellee Intervenors could intervene in a custody proceeding and thwart the legal process designed to provide stability in custody determinations." Contrary to the Appellant's claim, Christopher and Tanya F. were not just some "non-parents" exercising time with a child. The courts below heard testimony and were presented with other evidence that proved that Christopher and Tanya F. were the primary caregivers for Senturi. Actually, Misty V., since Christopher and Tanya F. intervened, spends more time with Senturi than she did prior to this current action. Simply arguing that there was no formalized parenting plan, in no way diminishes the fact that since Christmas 2004, with the consent and encouragement of Misty V., Christopher and Tanya F. have been the primary caregivers of Senturi.

1. Transfer Of Custody

At no time during any hearing on this matter has it been argued or suggested that Misty V. transferred custody of Senturi to Christopher and Tanya F. The Corrected Order entered by the Family Court on June 28, 2006, specifically states that Misty V. is to be designated the primary residential parent of the child, Senturi.

Christopher and Tanya F. have never argued nor did the Circuit or Family Court find that custody had been transferred, therefore the Appellant's analysis of *Overfield v. Collins*, 199 W.Va. 27, 483 S.E.2d 27 (1996), is not applicable to the case before this Honorable Court. *Overfield*, sets forth the burden of proof and formalities in transferring custody from a natural parent to a third party. Once again, Christopher and Tanya F. have never argued that custody was transferred. What they have argued and proved, as evidenced by the Circuit Court's order, was that that Misty V., beginning on Christmas 2004, with her consent and encouragement, began a relationship with Christopher and Tanya F. that resulted in Christopher and Tanya F. becoming the psychological parents of Senturi.

2. Babysiting

Christopher and Tanya F. were not merely babysitting Senturi. The evidence in this case is overwhelming and obvious that Christopher and Tanya F. were not merely babysitting Senturi for the fourteen (14) months prior to this action. The Appellant continues to refer to Christopher and Tanya F. as merely babysitters but, the facts and evidence clearly show that Christopher and Tanya F. were far more than babysitters.

The facts and evidence in this case in no way fit the definition of a babysitter.

> **Babysit**- to care for children during a short absence of the parents. *Merriam-Webster OnLine Dictionary* (16 August 2006) *available at* www.m-w.com.
>
> A babysitter is someone who provides occasional child care for a few hours at a time. Teenage babysitters often provide babysitting services for a few hours at a time. However, in-home sitters range from nannies who may have training in child development and first aid to women who, although not trained formally, have had many years of experience caring for children, including their own. Parents might prefer an au pair, a young person usually a woman in her early twenties, often from abroad, who lives with the family to provide child care. *Healthline* (16 August 2006) *available at* www.healthline.com.

Beginning on Christmas 2004, and continuing for fourteen (14) months, with the consent and encouragement of Misty V., Christopher and Tanya F. became Senturi's primary caregivers. Christopher and Tanya F. provided the child's food, clothing, and shelter, as well as, provided for her emotional, physical, and spiritual needs. Although Misty V. continues to refer to Christopher and Tanya F. as merely babysitters, the definitions above, the facts of this case and the Courts below do not agree with her.

Christopher and Tanya F. did receive payments from LINK. Christopher and Tanya F. applied for LINK because Senturi was living with them and Misty V. offered no help in off-setting the costs associated with caring for a small child. Christopher and Tanya F. received payments from LINK for two and one-half months. However, these payments were reimbursed. In fact, the reason Christopher and Tanya F. reimbursed LINK, according to the LINK representative, who was a witness for Misty V. below, was that Christopher and Tanya F. were caring for the Senturi too much. (Intervenor's Resp. to Mot. of Misty V. To Dismiss Intervening Pet'rs For Lack Of Standing, April 25, 2006, at p. 2.) That is to say, based upon LINK standards, the time Senturi was spending with Christopher and Tanya F. exceeded standards by which one could be compensated for babysitting.

Misty V. was actually the babysitter for Senturi beginning Christmas 2004. No fewer than three (3) times in section (A) of her Petition For Appeal in Circuit Court Misty V. says that she "had remained active and involved" or "has consistently spent time with her daughter." This same trend continues in Appellant's brief before this Honorable Court when Misty V. claims she was "actively parenting her child." Nowhere in the Petition For Appeal in Circuit Court or in her brief before this Honorable Court does

Misty V. claim that she was the primary caregiver or that she was the sole provider for Senturi, rather, she claims to "have spent time" or "remained active." The reason she does not claim to have been the primary caregiver or sole provider is because the facts do not support that claim. The facts, as evidenced by the Circuit and Family Court's order, clearly show that contrary to Misty V.'s belief, Christopher and Tanya F. were not merely babysitters, but were the primary caregivers to Senturi for the majority of her life.

3. Troxel v. Granville

The facts of *Troxel v. Granville*, 530 U.S. 57 (2000) and the analysis of the Supreme Court of the United States are distinguishable for the case before this Honorable Court. The Supreme Court was asked to review the Washington nonparental visitation statute. According to Washington Rev. Code § 26.10.160(3):

> any person may petition the court for visitation rights at any time and the court may grant such visitation rights whenever visitation may serve the best interest of the child.

The Supreme Court used such language as, "the Washington visitation statute sweeps too broadly," to describe the statute. *Id.* at 63. The Court also described this statute as "breathtakingly broad." *Id.* at 67. By comparison, the West Virginia Code section that allowed Christopher and Tanya F. to intervene is much more specific and narrows who may intervene. West Virginia Code § 48-9-103(b) reads as follows:

> In exceptional cases the court may, in its discretion, grant permission to intervene to other persons or public agencies whose participation in the proceedings under this article it determines is likely to serve the child's best interests. The court may place limitations on participation by the intervening party as the court determines to be appropriate. Such person or public agencies do not have standing to initiate an action under this article.

Viewed together the West Virginia statute and the Washington statute are quite different. The West Virginia statute is narrowly tailored to allow the court, in its

discretion, to determine who may intervene. This statue also allows the court to place limitations on the intervening party when the court deems it necessary to do so. Unlike the Washington statute, nowhere in the West Virginia statute do the phrases "any person" or "at any time" appear.

The Family Court's decision was based upon special factors that allowed the court to make its decision. In *Troxel*, the Supreme Court pointed out that the Washington Superior Court's order was not founded on any special factors that would allow the State's interference. *Id.* at 68. Additionally, the Supreme Court found that when the Washington Superior Court intervened it gave no special weight to [the mother's] determination of her daughters' best interests. *Id.* at 69.

Troxel is a grandparent visitation case. This Court has adopted the analysis in *Troxel* with respect to grandparent visitation. In *In Re: Grandparent Visitation of Cathy L.M. v. Mark Brent R. and Carla Ann R. 217 W.Va. 319, 617 S.E.2d 866, 875 (2005)*, this Court held:

> a judicial determination regarding whether grandparent visitation right are appropriate may not be premised solely on the best interest of the child analysis. It must consider and give significant weight to the parents' preference, thus precluding a court from intervening in a fit parent's decision making on a best interest basis.

Unlike the decision rendered by the Washington Superior Court, the Family Court's decision was not only consistent with West Virginia Code § 48-9-103(b), but also the decision was consistent with the analysis of the Supreme Court in *Troxel* and this Court's adoption of the *Troxel* analysis. The decisions of the courts below were not only based on the best interest of the child, but the decisions were based upon a best interest analysis coupled with the fact that with the consent of Misty V. Christopher and Tanya F.

had formed an attachment to the child. It would appear the child is similarly bonded to Christopher and Tanya F. (Finding of Fact number 20).

Misty V.'s preference was quite clear. She preferred that Christopher and Tanya F. care for Senturi. As a result of consenting to Christopher and Tanya F.'s caring for Senturi almost exclusively for fourteen (14) months, an attachment and bond formed between Senturi and Christopher and Tanya F. Not only did the Family Court consider the preference of Misty V., the court also examined the special factors in this case that allowed Christopher and Tanya F. to intervene. Specifically, the court found that Christopher and Tanya F. had become the psychological parents of Senturi, specifically conforming to the definition of psychological parent, as defined by this Honorable Court in *Clifford K. and Tina B. v. Paul S.*, 217 W.Va. 625, 619 S.E.2d 138 (2005).

Misty V. and Christopher and Tanya F. had a parenting arrangement. Beginning Christmas 2004, and continuing for the next fourteen (14) months, Misty V. consented and encouraged Christopher and Tanya F. to be the primary caregivers of Senturi. Misty V. consented to Christopher and Tanya F. providing for Senturi, while Misty V. chose to have only limited interaction with Senturi. As a result of this relationship consented to and encouraged by Misty V., Senturi and Christopher and Tanya F. formed an emotional bond rising to the level of Christopher and Tanya F. fitting squarely within this Court's definition of psychological parent.

II. THE CIRCUIT COURT DID NOT ERR IN AFFIRMING THE FAMILY COURT'S FINDING THAT THE INTERNENORS ARE "PSYCHOLOGICAL CO-PARENTS" OF THE CHILD AND ALLOWING THEM TO INTERVENE IN THIS PROCEEDING.

1. Current West Virginia law defining "psychological parent"

Christopher and Tanya F. proved, and the courts below agreed, that they, with the consent and encouragement of Misty V., became the psychological parents of Senturi. Misty V. had the opportunity to refute the evidence that Christopher and Tanya F. had become the psychological parents of Senturi but could not.

This Court has defined psychological parent as:

> A psychological parent is a person who on a continuing day-to-day basis, through interaction, companionship, interplay and mutuality, fulfills a child's psychological and physical needs for a parent and provides for the child's emotional an financial support. The psychological parent may be a biological, adoptive, or foster parent, or any other person. The resulting relationship between the psychological parent and the child must be of substantial, not temporary, duration and must have begun with consent and encouragement of the child's legal parent or guardian *Clifford K. and Tina B. v. Paul S.*, 217 W.Va. 625, 619 S.E.2d 138 (2005).

Misty V. claims that because she never consented to a legal and binding shared parenting plan with Christopher and Tanya F., Christopher and Tanya F. cannot be psychological parents. Nowhere in this Honorable Court's definition of psychological parent is there a requirement that the consent referred to in the definition come from a legal and binding shared parenting plan. Rather the definition of psychological parent, with respect to the consent element, speaks to the consent of the relationship that leads to someone becoming a psychological parent. The evidence in this case is overwhelming that Misty V. consented to the relationship between Christopher and Tanya F. and Senturi.

Misty V. also claims that the relationship between Senturi and Christopher and Tanya F. does not rise to a "substantial" level. Misty V. defines substantial as the child's cognitive ability to form the necessary emotional bond. A closer reading of this Court's definition of psychological parent reveals that this Court, when speaking of the substantial element, is speaking to the amount of time the psychological parent spends with the child. This can be clearly seen as this Court uses the phrase "not temporary" to define substantial. *Id.* This Court goes into further detail to explain "substantial" as it is clear from the definition of psychological parent, that "substantial" is referring to the amount of time a psychological parent spends with a child.

Misty V. cites *In Re: Alyssa W. and Sierra H.*, 217 W.Va. 707, 619 S.E.2d 220, 224 (2005), as the authority to suggest that Sentui could not form a "substantial" emotional bond with Christopher and Tanya F. The facts of *In Re: Alyssa W. and Sierra H.* are quite different from the facts before this Court. In *In Re: Alyssa W. and Sierra H.*, the father was seeking post-termination visitation with Sierra H. This Court found that because Sierra H. was only fourteen (14) months old when the case commenced and Sierra H. had not seen her father for more that a year, and her subsequent contact with her father was limited to regularly scheduled visits, serious doubt was cast on the notion that Sierra H. had developed a close emotional bond with her father. *Id.*

Christopher and Tanya F. were a constant presence in Senturi's life since she was nine (9) months old, and they continue to have that presence in Senturi's life today. Even if the substantial element of psychological parent is referring to the cognitive ability to form a close emotional bond, Misty V. offered no evidence below to show that Senturi has not indeed formed an emotional bond with Christopher and Tanya F. Actually, the

relationship developed to the point where Senturi called Christopher and Tanya F. her "Nana" and "Papa." In fact, Misty V. herself called Christopher and Tanya F. Senturi's "second mom and dad."

Based upon this Court's definition of psychological parent and the evidence that was presented below, there is no question that Christopher and Tanya F. are Senturi's psychological parents. However, this Court was quick to point out in *Tina B.* that simply meeting the definition of psychological parent does not automatically permit the psychological parent to intervene. *Tina B.* at 157.

A parent has a fundamental right to the custody of his or her child. However, this Court in *Tina B.*, citing Syl. pt. 6, in part, *Lemley v. Barr*, 176 W.Va. 378, 343 S.E.2d 101 (1986), said "[t]he law does not recognize any absolute right in any person or claimant to the custody of a child." *Id.* This Court further explained, "[t]he court is in no case bound to deliver the child into custody of any claimant and may permit it to remain in such custody as its welfare at the time appears to require." *Id. quoting* Syl. pt. 3, in part, *State ex rel. Lipscomb v. Joplin*, 131 W.Va. 302, 47 S.E.2d 221 (1948).

2. Current West Virginia law defining "exceptional cases"

Based upon this Court's analysis of W.Va. Code § 48-9-103(b) in *Tina B.*, this case before this Honorable Court is an exceptional case. West Virginia Code § 48-9-103(b) states as follows:

> In exceptional cases the court may, in its discretion, grant permission to intervene to other persons or public agencies whose participation in the proceedings under this article it determines is likely to serve the child's best interests. The court may place limitations on participation by the intervening party as the court determines to be appropriate. Such person or public agencies do not have standing to initiate an action under this article.

In other words, a person may, subject to the court's discretion, intervene in a custody proceeding if the facts of a case warrant such intervention and if the intervention is likely to promote the best interest of the child. *Clifford K. and Tina B. v. Paul S.*, 217 W.Va. 625, 619 S.E.2d 138, 152 (2005). The pivotal phrase in this statute is "exceptional cases." This Court in analyzing this phrase found that the Legislature had left this phrase undefined. *Id.* at 153. This Court stated in *Tina B.* that when a statute's terms are not clear, statutory construction, rather that strict application, is appropriate. *Id.* at 146. In such instances, "[j]udicial interpretation of a statute is warranted only if the statute is ambiguous and the initial step in such interpretative inquiry is to ascertain the legislative intent." *Id. quoting* Syl. pt. 1, *Ohio County Comm'n, v. Manchin*, 171 W.Va. 552, 301 S.E.2d 183 (1983).

The phrase "exceptional cases," was left undefined by the Legislature. Because this phrase was left undefined, this Court in *Tina B.*, had to determine what the Legislature intended when it included this phrase in § 48-9-103(b). To help determine the Legislature's intention this Court looked to companion statutes of this provision. This Court found that the companion statutes of this provision make it abundantly clear that the primary aim of this legislation is to secure custodial placements of children that serve their best interest and to promote stability and continuity with those parents or parental figures with whom such children have formed an emotional attachment bond. *Id.* at 147.

Using the above analytical framework, this Court has held the following concerning "exceptional cases:"

> Therefore, we hold that the reference to "exceptional cases" contained in W.Va. Code § 48-9-103(b) signifies unusual or extraordinary cases, and, accordingly, a court should exercise its discretion to permit intervention in such unusual or extraordinary cases only when intervention is likely to serve the best interests

of the subject child(ren). *Id.* at 153.

The courts below, much like this Court in *Tina B.*, were faced with a unique situation in that this matter was not the typical custody case. There is no question that the facts of *Tina B.*, and the facts surrounding Senturi and Christopher and Tanya F. are different. However, there are some similarities between these cases. First, the instant case is an exceptional case as defined above. Misty V. has advocated, encouraged, and consented to Christopher and Tanya F. raising Senturi, while she choose to have a very limited role in Senturi's life. Secondly, as in *Tina B.*, the resulting effect of Christopher and Tanya F. caring for Senturi's every need for fourteen (14) months prior to this action, is that a deep attachment and emotional bond has mutually arisen between Senturi and Christopher and Tanya F. As a result of these deep attachments and emotional bonds, Christopher and Tanya F. are Senturi's psychological parents.

The Courts below, after hearing and reading the facts of this instant case and applying this Court's analysis of § 48-9-103(b), and this Court's analysis of "psychological parent," did not abuse their discretion.

Misty V., in her brief before this Honorable Court, on pages 20 and 21, argues that in applying the law to the facts of this case, the Courts below have reached an absurd conclusion in applying West Virginia Code § 48-9-103(b). In support of this argument, Misty V., uses the following analogy:

> ...And it does not make either legal or practical sense to allow someone who is not a party to a parenting agreement to participate in a custody proceeding based on the alleged time she has spent with a child. If it did, then anyone who spends time with a child- a daycare provider, a kindergarten teacher or a volunteer-could intervene in a custody matter simply alleging 1) that he or she spent substantial time with the child and, 2) that the mother consented to his or her establishment of a co-parenting relationship with the child.

What Misty V. fails to recognize is that a daycare provider, a kindergarten teacher or a volunteer does not keep the child for weeks at a time; they do not take the child on vacations; they do not provide clothing, shelter, food, financial and spiritual support. These people are not called "Nana" and "Papa" by the child. These people are not called the child's "second mom and dad" by the child's mother. These people care for the child for a short time and then return the child. They do not, as Christopher and Tanya F. have done, invest their lives, with the consent and encouragement of the mother, into the child's life.

III. CONCLUSION

For these reasons, your Appellees submit that the Circuit Court's "Order Affirming Family Law Judge's Order" entered October 30, 2006, and the Family Court's Order entered June 28, 2006, clearly comports with the law, and ask this Honorable to affirm the findings of these Courts.

Christopher and Tanya F.

By Counsel

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CERTIFICATE OF SERVICE

I, Steven M. Bragg, counsel for Appellees, in the above styled action, certify that on the 8th day of May, 2007, I served a copy of that attached ***Brief On Behalf Of Appellees, Christopher and Tanya F.***, by depositing a true and accurate copy thereof in the United States Mail, first class postage pre-paid, addressed to:

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